IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MFA.No. 559 of 2001()

OPMV.1172/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT:

MR.JAMES.P.L.
PADATHU VALIYA VEEDU,
WARD NO.VIII,
ARYAD PANCHAYAT, ALAPPUZHA.

BY ADV. SRI.A.K.ALEX
SRI.P.VIJAYARAGHAVAN

RESPONDENTS:
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1. MR.E.BALASUBRAMANIYAN,
S/O.M.K.EASWARA CHETTIYAR,
37/1, BANGALORE ROAD, VELLOORE-632004.

2. MR.S.JAYAKUMAR,
S/O.P.S.SUBRAMANI,
NO.123, YAKUB SAHIB STREET,
KASBA, VELLOORE, NORTH ARCADU DISTRICT,
TAMIL NADU.

3. THE UNITED INDIA INSURANCE CO.LTD.,
T.K.M.COMPLEX, 1ST FLOOR, 46-51 KATPADI ROAD,
VELLOORE-632004, NORTH ARCADU DISTRICT,
TAMILNADU, REPRESENTED BY ITS BRANCH MANAGER.

4. THE MANAGING DIRECTOR, K.S.R.T.C. LTD.
THIRUVANANTHAPURAM.

(SINCE THE ORIGINAL 4TH RESPONDENT IN THE OP HAS BEEN EXONERATED FROM LIABILITY BY THE Tribunal THE SAID RESPONDENT IS NOT A NECESSARY PARTY AND THEREFORE NOT IMPLEADED AS A RESPONDENT IN THIS APPEAL.)

BY ADV. SRI.R.S.KALKURA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON 20/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 559 OF 20O1

Dated this the 20th day of November, 2007

JUDGMENT

Koshy, J.

Appellant while travelling in a K.S.R.T.C bus, sustained serious injuries in an accident when tourist bus bearing registration number TN-23/C 6789 driven by the second respondent in a rash and negligent manner hit the K.S.R.T.C bus. He claimed Rs.18,08,900/- as compensation. The Tribunal has awarded only Rs.3,29,900/-, out of which, Rs.80,000/- was towards medical and other expenses. Only the quantum of compensation is disputed in the appeal, as the Tribunal has found that the accident occurred due to the negligence of the driver of the tourist bus and the above bus was insured by the third respondent Insurance Company and the Insurance Company was held liable.

2. There is no dispute that the petitioner has suffered very serious injuries and suffered fractures on both legs, apart from other injuries. The medical board has examined him and Exhibit A11 is the medical certificate. The medical board certified as follows:

"We have gone through his treatment records and examined him carefully. The following are our observation.

1) Evidence of malunited fracture of the Right femur it its middle third with hypertrophic callus formation.

2) Hypertrophic scar about 3 x 2 cm in the lateral aspect of middle of right thigh adhering to the deep muscles.

3) Shortening of the right lower limb by about 4 cm.

4) Wasting of the right thigh muscles.

5) Post-traumatic stiffness of the Right knee with limitation of knee flexion beyond 10 degree.

6) Post traumatic stiffness of the Right ankle with limitation of terminal 10 degree of dorsiflexion and plantar flexion movement.

7) The patient has difficulty in squatting and cannot sit cross-legged.

8) Irregular adherant scar about 5 x 3 cm on the middle of right leg on its anteromedisal aspect.

9) Evidence of malunited fracture of both bones of left leg in its middle third with about 1.5 cms overlapping and about 10 degree of posters-medial angulation.

10) Movements of left knee and ankle joint are within normal limits.

11) Evidence of a malunited fracture of the right ulna it its lower 4th. The function of Right elbow and wrist including grip movements of hand are within normal limits.

12) Evidence of old healed tracheostomy wound in the lower part of anterior aspect of neck.

13) Patient has difficulty in climbing stairs.

The above disabilities are alleged to be the sequele to a Road Traffic accident which he has sustained on 24.4.95.

The permanent partial disability arising from the above observation is estimated as 30% (Thirty percent) as per the Mc-Bride scale."

3. The Tribunal, even though accepted the above certificate, did not award compensation for disability on a scientific basis and

granted Rs.2,00,000/- as compensation for permanent disability, loss of earning power and loss of amenities together. The appellant was employed in Saudi Arabia. Exhibit A9 is the passport, which shows that the accident occurred during his leave period of two months. Exhibit A8 is the certificate issued by the employer in Saudi Arabia which proved his employment in Saudi Arabia. According to the petitioner, he was a marble and tiles worker and therefore, he is a skilled worker and his monthly income was Rs.8,300/- as evidenced by Exhibit A8. The Tribunal found that for three months he was on treatment. Therefore, taking into account Rs.8,300/- as the monthly income, Rs.24,900/- was awarded for the loss of earning power, but for calculating permanent disability, multiplier system was not taken into account. It is true that if Rs.8,300/- is taken for disability, it will be a huge amount. It is true that the Apex Court in ***APRTC v. M.Pentaiah Chery*** (AIR 2007 SCW 5689) held that as far as possible, multiplier system mentioned in the second schedule provided under Section 163 should be followed in cases under Section 166 also. But in ***United India Insurance Co. Ltd. v. Patricia Jean Mahajan & Ors*** (JT 2002(5) SC 74) the Apex Court held that multiplier system can be deviated if the multiplicand is very high and low multiplier can be taken. But in that case it is also stated that if the motor accident victim was employed in foreign countries, then the exchange rate of

value on the date of accident should be taken into account. Here, on the date of accident as per the exchange rate, his monthly income was Rs.8,300/-. It is the case of the claimant that in view of 30% disability, he was unable to do any work due to the shortening of the right lower limb and other fractures. According to him, he is entitled to get compensation for 100% disability as he lost his job and his earning capacity is completely lost. He was 35 years at the time of accident. We are of the view that since he could not go back to Saudi Arabia, his expenses for getting accommodation in Saudi Arabia and other incidental expenses will be reduced. Out of the above, one-third can be deducted. Therefore, Rs.6,000/- can be taken as the multiplicand in this case for calculating compensation instead of Rs.8,500/-. According to the claimant, prospects of employment also should be taken into account. It was also argued that unlike the case of death no deduction need be made for personal injuries. But according to him, he was employed in Saudi. Since he lost employment, personal expenses need not be incurred at Saudi. Considering the entire circumstances, we are of the view that Rs.6,000/- taken as the multiplicand will be sufficient. Next question is the multiplier. As per the second schedule, 16 is the multiplier as we have seen that second schedule is taken as the guidelines and exact multiplier need not be changed when the multiplicand is high. We are of the opinion that in the facts and

circumstances of the case, 13 would be the sufficient multiplier, even though we have taken a reduced monthly income. If that be so, compensation payable will be:

$$\frac{6000 \times 12 \times 30 \times 13}{100} = \text{Rs.2,80,800/-}$$

for disability, loss of earning power and consequent to the difficulties. Therefore, the claimant would be entitled to an additional amount of Rs.80,800/- for disability, loss of earning power, loss of amenities and other consequential difficulties, over and above the amount decreed by the Tribunal. We are of the opinion that compensation granted under other heads is just and reasonable. Therefore, the additional amount of Rs.80,800/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the date of deposit. On deposit of the above amount, the appellant is allowed to withdraw the same, as the accident occurred more than ten years ago.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.559 OF 2001

JUDGMENT

20.11.2007